

## US anaesthetist sued after patient records her insulting comments



### Key messages from the case

Treating patients with respect at all times is central to good patient care. As this US case illustrates, allowing personal feelings to colour your approach to patients and showing disrespect to vulnerable patients will have severe professional consequences.

### Details of the decision

#### Recording consultation

Patient DB was anxious and asking many questions about his colonoscopy prior to the procedure. Anaesthetist Dr I did not realise that the patient was recording the pre-op discussions to ensure that he did not miss any instructions – and the recorder remained on and continued to record in the theatre during the procedure.

During the procedure Dr I made multiple derogatory and inappropriate comments about the patient while he was sedated. She commented that "after five minutes of talking to you in pre-op I wanted to punch you in the face and man you up a little bit." She joked about a rash on DB's penis, warning the surgical assistant not to touch it in case they got syphilis. She then wrote a false diagnosis on the patient's chart, commenting "I'm going to mark hemorrhoids, even though we don't see them and probably won't. I'm just going to take a shot in the dark."

DB heard the recording on the way home and sued Dr I.

The relevant US law only required that one party involved in a discussion needed to agree to the recording – so the recording was not illegal.

Laws vary between states in Australia but such recordings are legal in some jurisdictions here.

#### Professionalism – respect

The court found DB's medical malpractice claim was made out – even though patient did not suffer any physical injury, because he suffered anxiety, embarrassment and lack of sleep for months.

#### Defamation

Patient DB sued for defamation. Under US law, this was made out because Dr I had suggested the patient had syphilis and 'tuberculosis of the penis'. Though the comments did not leave the operating room, the patient was able to show that there were as many as three other people in the room and that they were discussing matters beyond the scope of the colonoscopy.

#### Outcome

Dr I was found guilty of medical malpractice and defamation. Damages, including punitive damages totalled US\$500,000. Her practice was ordered to pay US\$50,000 of this.

It is not clear whether she also faced disciplinary action from the state medical board.

## Key lessons

Treat patients with respect at all times. Regulators and courts in Australia would also take a very dim view of behaviour that demeans and belittles a vulnerable, unconscious patient.

Falsifying medical records would also attract severe disciplinary consequences.

In Australia such a recording is legal in some states. In other cases patients have reported hearing discussions while they were sedated. Such behaviour might also trigger a colleague's employment or mandatory reporting obligations as it is likely to be considered a significant departure from professional standards.

## References and further reading

- Avant article – [Watch out for these pitfalls when recording your consult](#)
- Avant article – [Disrespect towards patients: insights to reduce risk](#)
- Avant factsheet – [Mandatory notifications about health practitioners](#)
- Avant factsheet – [Medical records: the essentials](#)

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